

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

NELLIE L. KING, THE LAW OFFICES OF
NELLIE L. KING P.A.

Plaintiff,

Case No.: 2019CA011150XXXXMB
CIRCUIT CIVIL DIV: AA

vs.

CITY OF DELRAY BEACH, FLORIDA ,
Defendant.

RESPONSE TO MOTION TO DISQUALIFY

COMES NOW, NICOLE GUERRIERO, by and through undersigned counsel and responds to the Plaintiff's Motion to Disqualify as follows:

1. The Plaintiff moves to disqualify Ms. Dunne as counsel for Nicole Guerriero on the basis that the plaintiff has served Ms. Dunne with a subpoena to testify in the Writ of Mandamus and claims there is a conflict and also such action is prohibited by Florida Rule of Professional Conduct 4-3.7.

2. Contrary to the plaintiff's position, Ms. Dunne is not an essential witness, and even if called to testify her testimony would NOT be contrary to Ms. Guerriero's position. The fact that Ms. Dunne is an Assistant State Attorney has no relevance in this matter and she is and never acted in such capacity regarding any of the matters giving rise to this public records suit. Moreover, it is the Plaintiff that is seeking Ms. Dunne's testimony not Ms. Guerriero so she would not be called on behalf of her client as Rule 4-3.7 discusses. Additionally, if this Court allows Ms. Guerriero to intervene, the disqualification of Ms. Dunne would work a substantial

hardship for Ms. Guerriero.

3. As to the argument that permitting Ms. Dunne to act as counsel for Ms. Guerriero would allow for an advantage to the Defendant and or Ms. Guerriero due to the Rule of Sequestration not being able to be utilized, there is a simple remedy for this. If the plaintiff seeks Ms. Dunne's testimony, they can simply call her first and then proceed to call Ms Guerriero, with Ms. Guerriero being sequestered for Ms. Dunne's testimony.

4. As for any confusion it would create to the trier of fact, this is not a jury trial. The Court is the trier of fact and in this case there would be no risk of confusion as to Ms. Dunne either testifying as a witness or making argument as counsel.

5. Lastly, Ms. Guerriero waives any and all conflict that the Plaintiff is able to substantiate.

WHEREFORE, NICOLE GUERRIERO respectfully request this Court DENY the Motion to Disqualify.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was delivered by email to Nellie King, Esq., Joseph Sconzo, Esq., Lynn Gelin Esq., and Lawonda Warren, Esq. on this 1st day of October, 2019.

Respectfully submitted,

/s/ Colleen M Dunne
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